

APPEAL NO. 041565
FILED AUGUST 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 17, 2004. With respect to the issues before her, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of the alleged injury is _____; that the claimant timely reported his alleged injury to his employer in accordance with Section 409.001; that the claimant did not have disability because he did not sustain a compensable injury; and that the respondent/cross-appellant (carrier) did not waive its right to raise a date-of-injury defense. In his appeal, the claimant asserts error in the hearing officer's determinations that he did not sustain a compensable injury and that he did not have disability. In its conditional cross-appeal, the carrier contends that the hearing officer erred in determining the date of the alleged injury and that the claimant timely reported his alleged injury to his employer. Neither party responded to the others appeal. In addition, the claimant did not appeal the determination of the carrier waiver issue.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable occupational disease injury. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, the hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. She simply was not persuaded that the claimant sustained his burden of proving that he developed right elbow epicondylitis as a result of performing repetitive, physically traumatic activities at work, namely driving the truck and unloading carpet and carpet padding. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer likewise did not err in determining that the date of the alleged injury is _____, or in determining that the claimant timely reported his alleged injury to his employer on that date. The hearing officer resolved the conflicts and inconsistencies in the evidence on these issues in favor of the claimant and as the fact finder, she was privileged to do so. Our review of the record does not reveal that the date-of-injury or notice determinations are so contrary to the great weight of the evidence as to compel their reversal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge